A.F.R.

01-08-2006

(104)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.5233/2000

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Petitioners : 1. The State of Madhya Pradesh, through Secretary, Water Resources Department, Mantralaya, Vallabh Bhawan, BHOPAL.

2. The Chief Engineer, Hasdeo Basin Water Resources Department, Bilaspur (MP)

3. The Joint Director of Treasury & Accounts and Pension, Bilaspur, Dn. Bilaspur (MP)

Versus

Respondents : 1. Shri R.C. Varma S/o Shri R.L. Varma Retd. Asstt. Enginer, O/o The Chief Engineer, Hasdeo Basin Water Resources, Bilaspur R/o Vinoba Nagar, Bilaspur, Tah. & Distt. BILASPUR (MP)

: 2. The State Administrative Tribunal Raipur Bench, through its Registrar.

Shri Vinay Harit, learned Dy. Advocate General for State/petitioner No. 1.
Shri Ashish Shrivastava, learned counsel for respondent No. 1.

ORAL ORDER
(Passed on 1st August, 2006)

The following oral order of the Court was passed by S.R.Nayak, C.J.

The 1st respondent having served in the Water Resources Department as Sub-Engineer, retired from service on attaining age of superannuation with effect from 30.4.1998. After his retirement, the Department, on the ground that the first respondent's pay was wrongly fixed by administrative clerk in the year 1980 while extending Selection Grade to the 1st respondent, by its order dated 4.9.1998, sought to recover sum of Rs. 1,07,267/- being excessive payment made to him due to wrong

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fixation of his salary in the year 1980. When that action of the Department was assailed before the Madhya Pradesh Administrative Tribunal, Raipur Bench (for short the 'Tribunal'), in Original Application No. 896/199, the Tribunal had come to the conclusion that the pay of the 1st respondent was wrongly fixed in the year 1980. Nevertheless, the Tribunal took exception to the action of the Department to recover the excess amount from the pensionery benefits payable to the petitioner on his retirement on the ground that the Department has failed to prove that the 1st respondent in any way misrepresented or contributed in wrong fixation of his salary in the year 1980. The Tribunal in the premise of the above finding and also placing reliance on the judgment of the Apex Court in **Nand Kishore Vs. Union of India** [1] quashed the order of recovery and directed that whatever money already recovered should be returned to the 1st respondent. Hence, this writ petition by the aggrieved State and its authorities.

2. We have heard learned counsel for the parties. It was contended by the learned Dy. Advocate General for the State that since, admittedly, the 1st respondent received excess money from the State, he should not be allowed to make unlawful gain at the peril of the State interest. It was highlighted that an Officer like the 1st respondent who held responsible post in the Irrigation Department, must have known that his salary was wrongly fixed and therefore, there was a duty cast on him to inform the Department to fix his salary correctly and having failed to do so, he is not entitled to contest the action of the Department to recover the excess money paid to him. *Per contra*, learned counsel appearing for the 1st respondent would submit that in view of the clear finding recorded by the Tribunal that there is no evidence to show that the 1st respondent had

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1. 1995 (31) A.T.C. 786.

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received excess sum of money by any *malafide* act on his part, in view of the settled law, the Department particularly at this distance of time, should not be allowed to recover the excess money paid to the petitioner. In support of the submission, learned counsel for the 1st respondent would place reliance on the judgment of the Supreme Court in the case of **Sahibram Vs. State of Haryana & Others**[2].

3. Having heard the learned counsel for the parties, we are satisfied that in wrong fixation of the 1st respondent's pay scale in the year 1980, the 1st respondent had no role to play. It is not the case of the Department that due to any misrepresentation or *malafide* acts on the part of the 1st respondent, the pay scale of the 1st respondent was fixed wrongly in the year 1980. If the Department itself on its own, may be *bonafide* mistake, fixed the pay scale of the petitioner wrongly in the year 1980 and went on paying on that basis, not for a year or two, but, till the 1st respondent retired after a long lapse of 18 years of service, in the year 1998, it would be totally inequitable ad unjust to recover the entire excess sum of money paid to the 1st respondent during the long span of 18 years in one-go out of the pensionery benefits payable to the 1st respondent. There is no need for us to dilate this aspect further, because, the judgment on which the Tribunal has placed reliance and the judgment cited by learned counsel for the 1st respondent and several others to follow the suit have deprecated the action of the State employer to recover the excess of money paid to the employee after long lapse of years, wherever, it was found that the concerned employee had not misrepresented or suppressed or misled the employer to pay excess money to him. For instance, in the case of **Sahibram Vs. State of Haryana & Others**[2], it was contended that the appellant therein did not possess the required

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2. 1995 Supp (1) Supreme Court Cases 18.

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educational qualifications and therefore, the appellant would not be entitled to the relaxation, and since the Principal erred in granting him the relaxation and on that basis, the appellant had been paid his salary on the revised scale, there was justification for recovering excess money paid to the appellant. The Apex Court while rejecting that submission was pleased to observe that it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him by the wrong construction made by the Principal himself for which the appellant cannot be held to be at fault. The same principle squarely applies to the facts of this case also. It is nobody's case nor is there any proof to show that the salary of the 1st respondent was fixed wrongly in the year 1980 due to any misrepresentation, suppression of facts or misleading on the part of the 1st respondent. If the paying authority itself without properly understanding the law and appreciating what is the appropriate pay scale attached to the post held by the 1st respondent in the year 1980, granted a wrong pay-scale to him and proceeded to pay excess amount for 18 years, it would be totally unjust and improper for the State at this distance of time, that too, after the 1st respondent retired from service on attaining the age of superannuation to recover excess amount in one-go. Looking from that angle also, we cannot take any exception to the impugned order of the Tribunal.

The writ petition is devoid of merit and it is accordingly dismissed.

No costs.

Sd/-
Chief Justice

Sd-/
Dilip Raosaheb Deshmukh
Judge